(Testimony of Lt. Col. Pearl Hugh Hand.)

A. It was delivered from a Nye & Nissen truck.

Q. What?

A. It was delivered from a Nye & Nissen truck, and [illegible] the mate on the boat signed the delivery slip.

Q. Did you see these delivered from a Nye & Nissen truck? A. No.

Mr. Faulkner: I submit no foundation is laid at this time. It is quite simple for them to lay it, but at this time we object to it on the ground that there is no foundation laid.

Mr. Hippeli: I submit the objection, your Honor.

The Court: With the understanding that it is connected up, I will allow the testimony. The objection is overruled.

(The document was thereupon received in evidence and marked U. S. Exhibit 45.)

Mr. Hippeli: Q. I will now show you U. S. Exhibit No. 48 for Identification and ask you to inspect that label (handing a document to the witness.)

A. Yes, I took that off the end of a case.

Q. Does that contain your inital?

A. That is correct.

Q. Does it contain a date? A. 4/26/44.

Q. Is that date in your handwriting?

A. That is correct.

Q. What does that date indicate?

A. It indicates the date of inspection, the date the inspection was made on the U.S.S. Cape Pillar.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Was that taken from one of the cases that bore the United States Grade AA inspection stamp?

A. That is correct.

Mr. Hippeli: At this time I offer U. S. Exhibit No. 48 for Identification into evidence. [434]

Mr. Faulkner: Same objection, your Honor.

The Court: Same ruling. The objection will be overruled.

Mr. Faulkner: With the additional objection that this evidence, we respectfully submit, could not possibly be admissible under any substantive count of the indictment. This is not the basis of any charge or Counts 2, 3, 4, 5, 6 and 7.

Mr. Hippeli: Was this admitted, your Honor?

The Court: The objection will be overruled. It may be admitted.

(U. S. Exhibit No. 48 for Identification was thereupon received in evidence.)

Mr. Hippeli: Q. At the time of the inspection, Colonel, on the Cape Pillar, do you recall if you removed certain eggs from the cases which you inspected?

A. Yes, I took eggs out of Pee-wee cases.

Q. Do you recall who was with you at that time?

A. Agents Huyett Magee and Dallas Johnson were there.

Q. I will hand you a box containing nine eggs and ask you to examine each of those eggs?

A. Yes, there are the eggs I removed from the Pee-wee cases.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Do each of those eggs contain your signature? A. That is correct, my initials.

Q. Your initials. There are two handwriting on the eggs, are they not? A. Yes.

Q. Whose handwriting is the other, if you know? A. Agent Magee. [135]

Q. Were you present when he wrote on the eggs? A. That is correct.

Q. Are those initials his?

A. That is correct, H. M.

Q. Has each egg two sets of initials——

A. And a date.

Q. A date, and "Cape Pillar" written on them?

A. That is correct, the name of the boat.

Q. Was all that writing put on in your presence? A. That is correct.

Mr. Hippeli: At this time the Government offers this box of ten eggs into evidence.

Mr. Faulkner: The same objection, your Honor.

The Court: The objection will be overruled. They may be admitted and marked.

(U. S. Exhibit 59 for Identification was thereupon received in evidence.)

Mr. Faulkner: Exception.

Mr. Hippeli: May I have permission to pass this to the jury, your Honor? and caution them not to break them?

(U. S. Exhibit 59 was passed to the jury.)

Mr. Hippeli: Q. Showing you each of the eggs contained in that exhibit, are they Pee-wee eggs?

(Testimony of Lt. Col. Pearl Hugh Hand.)

M Yes. Small Under Grades is another name for them.

Mr. Pratt: If your Honor please, I think in the interest of sanitation these eggs should be returned to cold storage where I think the FBI have them. [436]

Mr. Faulkner: They are in court now, Mr. Pratt.

Mr. Pratt: Would you consent to having them returned temporarily to cold storage?

Mr. Faulkner: I do not object, your Honor.

Mr. Hippeli: I am sure Mr. Welsh would not, your Honor.

The Government next offers for identification a yellow Nye & Nissen city sales customer's invoice No. 15274, dated 4/25/44, for the delivery of 60 cases of processed AA eggs to the Josiah Royce, Berth 3-W.

The Court: It will be admitted and marked.

(The document was thereupon marked U. S. Exhibit 60 for Identification.)

Mr. Hippeli: The Government next offers for identification Nye & Nissen invoice to the U.S.A., WSA, Isbrandtsen SS Company, General Steamship Company, dated 4/25/44, for three items including 60 cases of eggs, large, processed, Grade AA, in the sum of $1,427.85. At the lower left hand corner is No. JR17, SS. Josiah Royce, Outer Harbor, Oakland.

(The document was thereupon marked U. S. Exhibit 61 for Identification.)

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Hippeli: The Government next offers for identification a Veterinary Corps inspection of eggs sheet dated 4/25/44, initialled by P.H.H.

(The document was thereupon marked U. S. Exhibit 62 for Identification.) [137]

Mr. Faulkner: In the interests of time may I attempt to enter into a stipulation with the Government? The present transaction will relate to a ship called the Josiah Royce. The documents were similar to those used in connection with the Cape Pillar. We make certain objections, your Honor. I assume—and if I am wrong I would ask the Court to correct me—that although your Honor overruled my objections, the burden is on the Government to connect these transactions up, and if they fail to they are all subject to a motion to strike afterwards.

The Court: That is so.

Mr. Faulkner: And may we have the same objection to the testimony relating to the Josiah Royce that we interposed with relation to the Cape Pillar and if they fail to connect up, may we make a motion to strike?

The Court: These are all going in subject to a motion to strike and over the objection of counsel in the event they are not connected up and brought home to these defendants who are on trial.

Mr. Pratt: We understand that.

Mr. Faulkner: Is that agreeable, that we may have that objection?

Mr. Pratt: Perfectly agreeable.

(Testimony of Lt. Col. Percy Hugh Hand.)

Mr. Hippeli: May I extend it, Mr. Faulkner, to include two more ships I intend to question Colonel Hand about?

Mr. Faulkner: What are the names of those?

Mr. Hippeli: The SS John Muir and the SS William Coulter.

Mr. Faulkner: Then we have the same objection as interposed in the Cape Pillar incident, which it will be deemed the Court overruled, we excepted, and that if the Government fails to connect them up as to any defendant or all the defendants, it will be subject to a motion to strike afterwards.

The Court: Let the record so show.

Mr. Hippeli: Q. I will show you U. S. Exhibit No. 60 for Identification and U. S. Exhibit No. 61 for Identification. I will ask you if during the month of April, 1944, you examined a lot of eggs on the SS. Josiah Royce? A. Yes.

Q. And at that time do you recall having seen those two exhibits I have just handed to you?

A. I saw the yellow one.

Q. What number is that, please? Look at the back. A. 60.

Q. U. S. Exhibit No. 60 for Identification. Have you ever seen the white document, being U. S. Exhibit No. 61 for Identification?

A. Not that I recall.

Q. I will show you U. S. Exhibit No. 62 for Identification.

A. Yes, this is in my handwriting.

Q. I will ask you, independently of that docu-

(Testimony of Lt. Col. Pearl Hugh Hand.)

ment, do you recall specific cases graded into grades of specific cases of eggs on the Josiah Royce?

A. No.

Q. Referring to the document, will you tell us when you graded eggs for the Josiah Royce?

A. April 25, 1944.

Q. Where was that inspection?

A. It was made at Pier 3 in [439] Oakland aboard the U.S.S. Josiah Royce.

The Court: Q. Who was present?

A. Agent Huyett Magee.

Q. Anyone else?

A. I do not recall anyone else.

Mr. Hippeli: Q. How many cases of eggs did you inspect?

A. I inspected 4 cases of eggs.

Q. How many cases of eggs did you see there?

A. I saw 60 cases of eggs there.

Q. Did the 60 cases of eggs bear any Government stamp?

A. Fifty of them were stamped "U. S. Department of Agriculture dated 4/24/1944."

Q. Did the remaining ten cases bear any government stamp? A. No.

Q. Did they contain any markings?

A. They were marked with a "P" on the label.

Q. What label?

A. Nye & Nissen's label, green label.

Q. Did the 60 cases of eggs bear a Nye & Nissen label? A. Yes.

Q. Will you explain what cases of eggs you

(Testimony of Lt. Col. Pearl Hugh Hand.)

graded and state the results of your grading, please?

A. I picked four cases at random out of the entire delivery of 60 cases. I found that there were 39.7 U. S. Grade B eggs, 11.7 U. S. C, 3.2 U. S. Checks, 3 per cent Leakers, 2.7 per cent Inedible eggs, rotten eggs when delivered; 77 per cent of the eggs graded under the Medium grade, graded Small, 16 to 19 ounces per dozen. The entire lot was graded Small, Grade A, excepting that the loss was too high.

Mr. Hippeli: At this time the Government offers for identification a General Steamship Corporation Limited Purchase Order [440] JR-17, dated April 10, to Nye & Nissen for the delivery to the Josiah Royce of three items including 60 cases of eggs, FDA inspection required.

(The document was thereupon marked U. S. Exhibit 63 for Identification.)

Mr. Hippeli: Q. I notice on U. S. Exhibit 62 for Identification certain of the writing is in pencil and another sum is in ink. Is all of that in your handwriting? A. Yes, it is.

Q. How did you happen to use pencil on one occasion and ink on the other? Do you recall?

A. I made the notations in pencil subject to erasure if there was a mistake in putting them down on the form. In that case there didn't happen to be——

Q. What are these notes in ink?

A. That is the wholesale price of different

(Testimony of Lt. Col. Pearl Hugh Hand.)

grades of eggs for that respective day, the market price.

Q. And the pencilled notes are the results of your grading, is that correct?

A. That is correct. That is the percentage of cases graded.

Mr. Hippeli: The Government at this time offers U. S. Exhibit No. 62 in evidence.

The Court: It will be admitted and marked.

Mr. Faulkner: That is subject to our stipulation.

The Court: Subject to your objection.

(U. S. Exhibit 62 for Identification was thereupon received in evidence.) [441]

Mr. Hippeli: The Government next offers for identification United States of America, War Shipping Administration, Alaska Packers Association Purchase Order No. 4008, dated April 10, 1944, to Nye & Nissen, Attention of Mr. Berman, for delivery to the John Muir of certain items, including cheese, and 13 cases graded processed eggs.

(The document was thereupon marked U. S. Exhibit 64 for Identification.)

Mr. Hippeli: At this time the Government offers for identification a Nye & Nissen invoice to U. S. A., WSA, Alaska Packers Association, dated 4/24/44, for the delivery of certain items of cheese, butter, and an item of Medium Processed AA eggs, the invoice being in the sum of $1,292.91. The lefthand

(Testimony of Lt. Col. Pearl Hugh Hand.)

corner contains the number 4,008; USS John Muir, Berth B, Outer Harbor, Oakland, California.

(The document in question was marked U. S. Exhibit 65 for Identification.)

Mr. Hippeli: The Government next offers for identification a Veterinary Corps inspection of eggs sheet dated 4/24/44, signed by P. H. Hand, Lt.-Col., V.C., showing the inspection of eggs on the USS John Muir.

(The document was thereupon marked U. S. Exhibit 66 for Identification.)

Mr. Hippeli: Q. Colonel Hand, do you recall grading a lot of eggs on the John Muir in the middle of 1944? A. Yes. [442]

Q. Did you make an egg-grading sheet——

A. Yes.

Q. For that particular grade? A. Yes.

Q. Without your sheet do you recall the particular gradings of the particular cases?

A. No.

Q. Handing you U. S. Exhibit No. 66 for Identification I will ask you when you graded those eggs on the John Muir? What was the date of that grading? A. April 24, 1944.

Q. With whom?

A. Huyett Magee, Agent for FBI.

Q. Where was the John Muir, if you recall?

A. I don't recall just where it was.

Q. Was it in the Bay, around the San Francisco Bay area?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. In the San Francisco Bay port.

Q. Did you observe certain cases of eggs on the Muir? A. Yes.

Q. Where were the eggs?

A. They were in the refrigerating room.

Q. How many cases of eggs were there?

A. There were 48.

Q. Did each of the 48 cases bear a Nye & Nissen label? A. Yes.

Q. Did any of the cases bear a Department of Agriculture or any other Government stamp?

A. Yes, 38 of the cases were stamped by the U. S. Department of Agriculture graded AA. The stamp was dated 4/18/44.

Q. Were the remaining ten cases stamped by Government stamp? A. No.

Q. Did they bear any mark on the label, the Nye & Nissen label?

A. There was a purple "P" on the label. [443]

Q. Will you explain which particular cases you graded and give us the results of the grading, please?

A. I graded three cases of the Pee-wees and two of the Medium Grade eggs; three of the 10-case lot and two of the 38-case lot. In grading the Pee-wees I found that there were 50.3 U. S. Grade A eggs in them, 40 per cent of them were U. S. Grade B, 6.66 U. S. Grade C, one per cent of them were U. S. Light Dirty, one per cent U. S. Checks, and 66 per cent Loss. The 38 cases graded U. S. Grade AA Medium—they were stamped that by the U. S.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Department of Agriculture and I found that 9.8 per cent of them were U. S. Grade AA. 24

Q. How many cases now did you grade

A. Two out of the 38-case lot.

Q. And those 38 cases were marked what?

A. U. S. Grade AA.

Q. And in those two how many eggs did you find that were AA eggs? A. 9.8 per cent.

Q. How many eggs did you find in the first case that were AA?

A. How many eggs in the first case? None in the first case.

Q. How many in the second?

A. In the second case there were 19.

Q. Will you proceed with your grading?

A. An average of the two cases, I found 24 per cent of them to be U. S. Grade A, 34 per cent were U. S. Grade B, 30.5 per cent U. S. Grade C, one per cent U. S. Leakers, one per cent Loss, 5 per cent of them were rotten.

Q. And how did the whole lot grade?

A. No grade.

Q. Why?

A. There was too much loss in them. No loss or [444] inedible eggs are allowed.

Q. And the whole lot contained 48 cases, I believe? A. That is correct.

The Court: We will now take a recess.

(Recess.) [444-A]

The Court: You may proceed.

Mr. Hippeli: Q. Continuing with your reading

(Testimony of Lt.-Col. Pearl Hugh Hand.)

of the eggs on the John Muir, did you weigh the cases of eggs which you graded? A. No.

Q. Did you check the individual eggs that were weighed? A. Yes.

Q. What was the weight of the eggs?

A. I found that three cases were small Pee-wee eggs, they were under grade.

Mr. Faulkner: We ask that that go out, your Honor. The question was, "What was the weight?"

Mr. Hippeli: That is the weight, an indication of weight; that is a name of weight.

Mr. Faulkner: That is not the name of a weight. That is his opinion of what they would be.

The Court: You asked for the weight.

Mr. Hippeli: Because the——.

The Court: Read the question and the answer.

(Record read.)

The Court: That is the question.

The Witness: They weighed under 15 ounces per dozen.

Mr. Hippeli: Q. What is the name of that weight of eggs.

A. Undersize, Pee-wees, Pullet Eggs.

Mr. Faulkner: May I have the answer read?

The Court: Yes.

(The record was read by the reporter.)

Mr. Faulkner: We ask that that go out. The question was, "What was the weight of the eggs?"

The Court: The question following that—read the question and the answer so there is no ques-

(Testimony of Lt. Col. Pearl Hugh Hand.)

tion about it; the last two questions and answers.

(The record was read by the reporter.)

The Court: The questions and answers may stand.

Mr. Faulkner: Q. Well, respectfully, your Honor, we haven't any answer to the question of what was the weight of the eggs.

The Court: The question was answered. It may not be the answer that you hoped to develop, but it is answered. It will have to remain answered.

Mr. Faulkner: It would be like a man of my build giving his weight. I would prefer to give at at less than a certain figure but I would also be able to say how much I weighed.

The Court: Well, so there is no question about it, is that the weight of the eggs? A. Yes.

The Court: What is it?

A. 36 per cent of the 10 cases stamped "P" graded 14 ounces per dozen.

Mr. Hippeli: Q. What was the weight of the two cases of eggs which bore the U. S. Department of Agriculture stamp which you graded and graded and weighed?

A. They were medium grade eggs; they were not weighed.

Mr. Faulkner: We ask that the answer go out as not responsive. [446]

The Court: "They were medium grade eggs. They were not weighed."

Mr. Faulkner: Excuse me.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Hippeli: Were the individual eggs weighed in the two cases of eggs which you weighed and which bore the U. S. Department of Agriculture stamp?

A. They were very obviously a Medium Grade, they were large enough to meet the grade and they were not put on the egg scale individually.

Q. Were some of them?

A. No. They were all within the prescribed weight.

Q. I say, did you weigh some of them to determine if they were within the weight described for medium eggs? A. Yes.

Mr. Hippeli: The Government offers U. S. Exhibit 66 in evidence.

The Court: It may be admitted and marked.

(U. S. Exhibit 66 for Identification was received in evidence.)

Mr. Hippeli: At this time the Government offers for identification a Nye & Nissen Green Biddy Egg Label bearing a purple "P" stamp thereon.

(The document was marked U. S. Exhibit 67 for Identification.)

Mr. Hippeli: Q. I hand you U. S. Exhibit 67 for Identification. At the time of the inspection of the ten cases of [447] Pee-wee eggs found on the John Muir, did you remove one of the Pee-wee labels from those cases?

A. Yes; I removed this one from one of the ten. I signed it with my name and official title

(Testimony of Lt.-Col. Pearl Hugh Hand.)

and the date, 4/24/44, in the presence of Huyett Magee and Tobias Kobalach; he was a first mate on the John Muir.

Q. Was that "P" stamped on at the time you removed it? A. Correct.

Mr. Hippeli: I now offer Government's Exhibit 67 for identification in evidence.

(U. S. Exhibit 67 for Identification was thereupon admitted in evidence.)

Mr. Hippeli: Q. I show you a Nye & Nissen Biddy egg label, green Biddy egg label, bearing a U. S. Department of Agriculture stamp, U. S. Grade AA, and ask if at the time you were grading the remaining eggs bearing U. S. Department of Agriculture stamp on the John Muir you removed that label from one of those cases?

A. Yes, I removed this from one of the 35.

Q. Who was with you at the time?

A. Huyett Magee.

Q. Does that bear your initial or signature?

A. Yes.

Q. Does it bear the date?

A. Yes, 4/24/44; also signed by Tobias Kobalach.

Mr. Hippeli: The Government offers this in evidence.

(The document was marked U. S. Exhibit 68 in evidence.) [448]

Mr. Hippeli: Q. During the month of May,

(Testimony of Lt. Col. Pearl Hugh Hand.)

1944, did you have occasion to weigh some cases of eggs on the steamship William Coulter?

A. Yes.

Q. Do you remember who was with you at the time?

A. Special Agent Dallas Johnson, Huyett, Magee, and Captain Evans.

Q. Who was Captain Evans?

A. He was in the Veterinary Corps, U. S. Army; he was my detachment commander at the Presidio, San Francisco.

Q. Do you recall the weight of the cases that you inspected at that time?

A. No, I do not.

Q. Did you inspect the cases or just weigh them?

A. I just assisted in weighing them. Mr. Johnson weighed them. I recorded the weights.

Q. I will have you a piece of note paper and ask you to inspect that.

A. This is in my handwriting. It is a record of the individual cases as they were weighed.

Q. Does it contain the individual case weights?

A. Yes, it does; the gross weight, not the net, however.

Q. Do you recall independently of this note the weights of the particular cases? A. No.

Q. Do you recall whether or not there were any stamps on any of the cases independently of this notation? A. No.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Faulkner: I did not get the answer.

(The record was read.)

Mr. Hippeli: The Government offers for identification a [449] slip of paper bearing the initials PHH at the top and dated 5/8/44, containing the name of William C. Coulter, for identification.

The Court. Admitted and marked for identification.

(The document was marked U. S. Exhibit 69 for Identification.)

Mr. Hippeli: Q. Showing you Exhibit 69 for Identification, what are the numbers on your left-hand side containing circles?

A. That is the case, itself.

Q. The number of the case which you weighed?

A. Yes.

Q. What does the next column indicate?

A. The weight.

Q. Is that the gross weight? A. Yes.

Q. What is the tare of those cases?

A. That is not computed here.

Q. Were those wooden cases?

A. Not all of them, no.

Q. What would the tare of the wooden case be?

Mr. Faulkner: What would it be? We object to the form.

The Court: If he knows.

Mr. Hippeli: Q. What was it?

A. It wasn't computed.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. What would the flats and fillers—what did the flats and fillers in the wooden cases weigh?

A. Three and a half pounds.

Q. For all of them, or for a half case?

A. For the entire case.

Q. What did an empty wooden case weigh, if you know?

Mr. Faulkner: He just said it was not computed, your Honor.

Mr. Hippeli: I asked if he knew. [450]

Mr. Faulkner: If he didn't compute it he cannot know. He just said that. He did not compute it.

Mr. Hippeli: Colonel Hand is an experienced egg man. I believe he will know, in other words the weight of an empty wooden egg case.

Mr. Faulkner: You didn't ask him the approximate weight. You asked him what these cases weigh. He said he did not compute it.

The Court: Do you know what these cases weigh? A. I know the gross weight of them.

The Court: He knows the gross weight.

Mr. Hippeli: Q. Do you know the weight of an empty wooden egg case?

A. It will vary, depending on the type of lumber it is made out of, and how green it is.

Mr. Hippeli: Q. What is the approximate weight?

Mr. Faulkner: We object to that.

The Court: Sustained.

Mr. Hippeli: Q. In the third column, what does the third column indicate? A. No stamp.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Are those the cases that bore no stamp?

A. Correct.

Q. And your next column?

A. The ones that were Pee-wees.

Q. I notice on this, cases No. 5, 6, 7, and 8; you have indicated they were stamped with U. S. AA, Grade AA stamp.

A. That lot bore such a stamp, yes.

Q. Directing your attention to Item 5, is that an indication [451] of the tare on that particular case? A. Yes.

Q. What does that indicate?

Mr. Faulkner: I thought we had threshed out the purpose of the memorandum, your Honor. It is not to explain what is in the memorandum. It is to use it to refresh his testimony in respect to questions and answers given. This is all in explanation of the document. Further, this document is no evidence, because he did not weigh them. He has merely indicated on a piece of paper something that somebody told him out of the presence of the accused.

Mr. Hippeli: It is true the accused were not present; but Col. Hand has testified that he did weigh those particular cases.

Mr. Faulkner: No, he did not. He testified to the contrary, that he recorded the weight and that somebody else weighed it.

Mr. Hippeli: Q. Did you weigh those cases?

A. I was present at the time they were weighed.

(Testimony of Lt. Col. Pearl Hugh Hand.)

I took the weights off the scale as the cases were placed on the scale.

Q. Did you compute the tare on case No. 5?

A. We have here one-half case fillers and flats weighing 20 pounds.

Q. Did you weigh the flats and fillers?

A. Yes. They were taken out of the case.

Q. What did it weigh?

A. 20 pounds and ten ounces.

Q. What is that, the flats and filler?

A. And the eggs. [452]

Q. The flats, fillers and the eggs?

A. Yes.

Q. Weigh what?

A. 20 pounds and 10 ounces.

Q. That is a half case of flats, fillers, and eggs?

A. Yes.

Mr. Hippeli: The Government offers U. S. Exhibit No. 69 in evidence.

Mr. Faulkner: In evidence?

Mr. Hippeli: Yes.

Mr. Faulkner: We object to that document as incompetent, irrelevant and immaterial, and hearsay; no foundation laid for its admission under any circumstances. It does not even purport to be a record kept in the regular course of business of an Army inspection. It is a document in which he recorded—in his direct examination originally he said he assisted in weighing—assisted Captain Evans weigh the eggs and he recorded

Mr. Hippeli: I think this document is material

(Testimony of Lt. Col. Pearl Hugh Hand.)

because during the course of inspection of this case of eggs Captain Evans inspected the case of eggs and Col. Hand weighed the case. The result of the two, the inspection and the weighing, will give us the document similar to those which have gone into evidence. At this time I desire to introduce Col. Hand's weighing. Subsequently we shall introduce Captain Evans' grading.

Mr. Faulkner: My objection is to the document. I have no objection to the Colonel testifying from that document to [453] refresh his recollection.

The Court: The Court will sustain an objection to the document itself at this time. You might get in touch during the recess with Mr. Zirpoli, who has a case that went up in the circuit on the very point in question.

Mr. Hippeli: That is all.

Cross-Examination

Mr. Faulkner: Q. Colonel, in connection with some of the documents that you have identified here, you recall on your direct examination that you testified that you had seen a document which is marked here 54 for Identification, an invoice from the De La Rama Steamship Company to Nye & Nissen; is that right, that you had seen that at the time you were on the wharf?

The Court: Look at the document.

The Witness: It was either this one or one similar.

Mr. Faulkner: Beg your pardon?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Either that one or one similar.

Q. Well, you don't identify this, then, as the exact document that you saw, do you?

A. No.

Q. You saw something similar to that?

A. Either that one or one similar.

Q. Do you recall the type of eggs that were involved in the order of the De La Rama Steamship Company for the steamship "Henry White"? Do you remember what they were, Colonel?

A. Do I remember the type eggs? [454]

Q. What kind of eggs were ordered by the steamship Henry White from Nye & Nissen?

A. U. S. Fresh Processed Grade AA medium.

Q. As a matter of fact, the eggs that were ordered from Nye & Nissen were 1500 dozen eggs Fresh Processed, and there was no mention of AA's on the order, is there, Colonel?

The Court: You may look at that.

Mr. Faulkner: Q. Is that correct?

Mr. Hippeli: I believe——

Mr. Faulkner: Is that correct, Colonel?

Mr. Hippeli: I believe he is misquoting the Colonel. On direct examination he said he obtained that information from the invoice, here,——

Mr. Faulkner: I do not misquote the Colonel at all. I asked him what the order called for. He said U. S. Processed AA.

The Witness: It is not on that document.

The Court: He says it is not on that document.

Mr. Faulkner: Q. So that the De La Rama

(Testimony of Lt. Col. Pearl Hugh Hand.)

didn't order from Nye & Nissen U. S. Processed AA eggs, did it? A. I don't know.

Q. Well, look at the purchase order and tell me. Withdraw that. You have seen thousands of purchase orders, haven't you?

A. Not from that steamship company.

Q. You have seen thousands of purchase orders from other people [455] ordering eggs?

A. On United States Government purchase orders.

Q. Look at Exhibit 53 and tell me what kind of eggs the De La Rama Steamship Company ordered.

A. From this I wouldn't know what kind of eggs they ordered.

Q. You would not know what kind, is that right?

A. That's right.

Q. You didn't know what kind they ordered when you were down on the pier, either, did you?

A. It was on the invoice, the company invoice.

Q. You didn't know what kind of eggs the steamship company ordered when you were down on the pier, either, did you?

A. When I was on the boat. I didn't know anything on the pier. I found out all the information on the boat.

Q. On the boat? A. That is correct.

Q. When you were on the boat, and when you saw that purchase order, you didn't know then what they ordered, either, did you?

A. I took the information off the company invoice.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Well, that was what they were billed for, wasn't it?

A. That is what the steamship was billed for.

Q. Well, what they ordered you didn't know then and you don't know now, do you?

A. I was not interested in that. I was interested in what they were being weighed for.

Q. That is what you were interested in, is that right? A. Correct.

Q. You were brought down there by the FBI agents to make this [456] inspection, weren't you?

A. I was not brought down there by FBI agents. I was sent down by higher authority.

Q. Who is the higher authority?

A. At that time it was General George Marshall, chief of staff, and President Roosevelt, Commander-in-Chief.

Q. He is the one who ordered you to go?

A. Through channels.

Q. Just a moment. A. Through channels.

Q. General Marshall ordered you to go?

The Court: Through channels, he says.

Mr. Faulkner: Well, I never heard of a person named Channels, I asked him who ordered him.

The Court: Through regular channels.

The Witness: Things that come down through the different echelons.

Mr. Faulkner: Q. All right. Who ordered you to go down there?

A. General Joyce, Ninth Service Command, Commanding General.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. When did he order you to go?

A. I was given the order, I don't recall the exact date, it was in the early spring of 1944.

Q. How long before the time you went there to the steamship Henry White?

A. Approximately three weeks.

Q. Now, then, during that period of time, Colonel, you were also inspecting eggs in Nye & Nissen's, weren't you?

A. My inspectors were. [457]

Q. Under your direction?

A. Under my supervision.

Q. Those were inspections of eggs for the United States Army, weren't they?

A. For the armed forces, that is, Army, Navy, Maring Corps, Coast Guard.

Q. You did not inspect eggs exclusively for the Navy, did you? A. No.

Q. You did not inspect them for the Marine Corps, either, did you? A. Yes.

Q. But not for the Navy. A. Yes.

Q. Were you the inspection agency for the United States Navy? A. That is correct.

Q. Were you the only inspection agency?

A. No.

Q. Who were the others?

A. U. S. Department of Agriculture. [458]

Q. Now, then, how often were your inspectors in the firm of Nye & Nissen in the months of February, March, April and May, 1944?

A. In Petaluma they were there everyday.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. And how often were they in the plant down on 17th and Missouri?

A. I would say three times a week.

Q. During that period of time while you were inspecting eggs for delivery to the armed forces that were to be inspected by your bureau, did you at any time during the period of February to May 1944 reject any eggs from Nye & Nissen?

A. Yes.

Q. You did? A. Yes.

Q. In that period? A. Yes.

Q. When?

A. I do not recall the exact dates.

Q. How many occasions?

A. Oh, I would say, at least once a day.

Q. Where did you reject them?

A. Nye & Nissen's plant in Petaluma.

Q. In their plant at 17th and Missouri?

A. I would say there would be rejections there occasionally—oh, I would say approximately three times a week. Every time we went there we would reject at least one lot of eggs that would not meet the grade.

Q. Now, would you inspect those eggs?

A. Either I would inspect them or my inspectors would inspect them.

Q. Were you out inspecting eggs at 17th and Missouri during the period from February to May 1944? A. Yes, I was. [459]

Q. On how many occasions?

A. Let me have the dates again, please?

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. February 1944 to and including May of 1944.

A. Oh, I would say three or four times I was there with my inspectors.

Q. You mean a week?

A. No, I would say within the period.

Q. In that period you were out there three or four times, is that right?

A. I had a number of other plants to go to also.

Q. During that period of February 1944 to and including May 1944 what is your best recollection of the number of cases of eggs that were accepted by your department from Nye & Nissen?

A. Well, after we would finally get a lot that would pass inspection and did not have too many inedibles, I would say it would run around three cars a week from Nye & Nissen in this area.

Q. How many cases of eggs to a car?

A. 600.

Q. That would be 1,800 cases a week, is that correct?

A. Approximately that. I supervised the inspection when they were placed in storage and again when they went on the boat.

Q. Getting back to the Henry White, you have a paper here; part of it is in your writing in pencil, part of it is in ink, part of it is underlined and there is a lot of other things written on it. Was that all written at the same time and place?

A. That is correct.

Q. And where was that time and where was that place?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. It was on the USS. Henry White. [460]

Q. And in whose presence?

A. In the presence of Huyett Magee.

Q. Now then, that inspection was the first one that you made under this order that came down from the Chief of Staff, General Marshall, through the channels and then finally to you; that was the first one, is that correct?

A. That is correct.

Q. Now then, you were there for a purpose, weren't you, Colonel? A. Yes.

Q. And the purpose was to make an inspection of Nye & Nissen eggs that were under investigation by the FBI, isn't that right?

A. Yes, that was my order.

Q. Now, in the period of time that you were inspector in normal times and with no investigation, you were a very tough egg-inspector, weren't you? I do not mean it disrespectful. I mean as an inspector you were very tough, weren't you?

Mr. Hippeli: I object to that.

The Court: Very tough what?

Mr. Faulkner: Q. I mean you were very much stricter than the ordinary inspector, is that right?

A. No.

Q. Isn't it a fact, Colonel, when you were inspecting eggs down at the plant of Nye & Nissen you would take a single egg out in the sunlight to see if you could find a mark on it in order to reject it?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. That is my prerogative, examining eggs under the sun, if I so desire.

Q. In other words, if you desire, if the lot that is there for your candling isn't sufficient for your purpose and you [461] are determined to reject a case of eggs, you will go right out in the sunlight, and if it shows up a mark, you will reject that case of eggs because of that mark?

A. I used to buy silk the same way.

Q. That was typical of the degree of strictness that you possessed as an ordinary inspector?

A. I did it in other plants. I could do it in Nye & Nissen. There wasn't anything in the by-laws that said I could not.

Q. When you went down to that pier you were going to be even more strict than you would in the ordinary course of your business, weren't you?

A. No.

Q. Were you going to be more lenient?

A. I was going to be fair.

Q. Fair to whom? The FBI or the defendants?

A. To both.

Mr. Pratt: I object to that, if the Court please.

Mr. Faulkner: Q. Did you ever ask the defendants to come down and participate in any of those inspections? Yes or No?

A. I do not remember.

Q. Did you ever advise them at any time when they were sending as much as 1,800 cases of eggs a week through your channels that there was a quantity of eggs that you had seen that did not meet specifications?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. I didn't understand the question.

The Court: Read it.

(Question read by the reporter.)

A. A number of times. [462]

Mr. Faulkner: Q. In connection with your investigation with the FBI?

A. No, at a cold storage plant.

Q. Did you ever indicate to Nye & Nissen in relation to any of these ships—the Henry White, the Pillar, the Muir, the Coulter—there may be another one that I overlooked——

Mr. Hippeli: The Josiah Royce.

Mr. Faulkner: Q. Yes, the Josiah Royce—did you ever mention to Nye & Nissen that any of those eggs did not come up to the grade specified in either a purchase order or in a bill?

A. No, I did not.

Q. Now, when you inspected all of those eggs in every instance your inspection sheet reflected an opinion you had relating to the quality of those eggs, isn't that true? A. Yes.

Q. Now, in relation to the Henry White I ask you from looking at this document how you reached the figure that 16 per cent of these eggs were AA and 54 per cent were A's and 17 per cent were B's, which made a total of 87 per cent—why you testified that those were no grade eggs?

A. Because the loss was too high.

Q. Will you show me any rule or regulation that provides that eggs which require a minimum

(Testimony of Lt. Col. Pearl Hugh Hand.)

of 80 per cent of A's, AA's or B's is not a grade egg, or not subject to grading when there are 87 per cent that meet that classification? Will you show me the regulation that so provides?

A. If you will get C-271, or whatever the name is, I will show you in that one. It says [463] "No inedible loss will be allowed."

Q. Will you just show me the regulation?

A. It is in evidence. It was brought in this morning.

The Clerk: The first exhibit?

The Witness: Yes, I believe it was the first exhibit this morning. That is it.

Mr. Faulkner: Q. Now, is that the regulation you were going to show me?

A. That is correct.

Q. Were you making this inspection on army regulations?

Mr. Pratt: If the Court please, I think the witness is entitled to answer the previous question which related to the——

The Court: You are not fully conscious of it, Counsel, but he attempted to answer and you ask another question. You interrupt him.

Mr. Faulkner: I certainly did, your Honor, and I did not mean to.

The Court: Counsel objects to that. So I trust you will keep that in mind.

Mr. Faulkner: I will, your Honor.

The Witness: This is a specification of the Federal Standard Stock Catalog. It is public property.

(Testimony of Lt. Col. Pearl Hugh Hand.)

This is section 4, Part V, Federal Specification for Eggs, dated 28 April 1931.

Mr. Faulkner: Q. Is that the regulation you were inspecting those eggs under?

Mr. Hippeli: Let him read it, Counsel. He has not answered [464] your first question yet.

Mr. Faulkner: Q. Is that the regulation you were inspecting these eggs under? A. Yes.

The Court: You may read it then.

Mr. Faulkner: They were amended in 1943.

The Court: Just a moment.

Mr. Faulkner: Excuse me.

The Court: You may read it now.

The Witness: Under "Detailed Requirements," E-1, United States Standard Retail Grade, the last sentence, the last line——

Mr. Faulkner: Q. On what page, Colonel?

A. That is on Page 2: "No inedible eggs or loss will be allowed." That also appears under E-2, E-3, of that paragraph, Page 2: "No inedible eggs or loss will be allowed."

Q. Will you mark with a pencil where you read? I can't pick it up in my copy.

A. I will use my own. I have read lead in it. You can see it.

The Court: Here is your copy, Counsel.

The Witness: It is underlined in red.

Mr. Faulkner: Q. Are those the standards that you were using in that inspection that are set out in CE-271? A. Yes, U. S. Retail Grade.

Q. I mean that is what you used, is that correct?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Yes, that is correct. [465]

Q. You knew at the time you were inspecting those eggs that they had been inspected by the Department of Agriculture, who are governed by different rules and regulations, didn't you?

A. No, I did not.

Q. You know that the army regulations are not identical with the Department of Agriculture, don't you?

A. No, I do not.

Q. You did not know that? Do you know it now?

A. No. They are identical in certain respects.

Q. Have you ever read the Department of Agriculture regulations?

A. All regulations governing grading of eggs are put out by the U. S. Department of Agriculture.

Q. I asked you if you have read the U. S. Department of Agriculture regulations?

A. Yes.

Q. Have you read the regulations that govern the inspection of eggs that are followed by the Department of Agriculture inspectors?

A. Yes, it has been some time ago.

Q. Is the exhibit marked CE-271A the regulations which in your opinion are the regulations which cover the Department of Agriculture in the inspection of eggs?

A. It was at that time.

Q. It was at that time?

A. It has been amended since.

Q. U. S. 52——

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. It has been amended since it was put out. [466]

Q. Is U. S. Exhibit 52, from what you just read, the paper, which, in your opinion, governs the Department of Agriculture in the inspection of eggs?

A. I presume they have other specifications for eggs. That is not the only one, no.

Q. Have you ever read the other ones that they used?

A. I have glanced over them, yes.

Q. Is there any difference, if you know?

A. What do you mean? What do you mean specifically?

Q. Is the standard different?

A. They differ in some respects.

Q. Pardon me?

A. They differ in some respects.

Q. Now, you were down there, to be quite fair, to Nye & Nisson, and that is what governed your inspection, on the "Henry White." Now, I show you here a column that says, "Total" under the title "U. S. A egg 16 percent," and ask you how you got that figure, 16 percent?

A. You add up the total of the grade in each case and divide by the number of cases.

Q. When you added up the total what was the total you added up, according to that paper?

A. 32.

Q. 32? Now, you testified on your direct examination that on that occasion I think you said that

(Testimony of Lt. Col. Pearl Hugh Hand.)

you took certain fillers out with 36 eggs each out of five cases, is that correct?

A. That is correct.

Q. That is how many eggs?

A. 500 out of 5 cases that I inspected, 100 each case.

Q. I thought you testified something about taking so many, [467] grading this according to fillers.

A. You take three fillers out of each case, only you only grade 28 eggs in the third filler: 36, 36 and 28 equal 100.

Q. Is that how you did it in this instance?

A. Add the columns to the right and you will get 100.

Q. Which columns do you mean?

A. The ones in ink, unless there has been an error in computation.

Q. You have 32 AA eggs that you inspected, isn't that correct?

A. Where are you indicating now, pointing to?

Q. You mentioned 32 a second ago.

A. In the two cases, yes, 1 and 2, 32.

Q. Now, what is the other factor that you used in order to get the percentage?

A. Two cases; so you divide the 32 by 2, you have 16 percent—2 into 32 is 16.

Q. Is that the basis of your percentage?

A. That is the basis of any percentage. Take the number of each grade and the number of cases

(Testimony of Lt. Col. Pearl Hugh Hand.)

and divide by the number of cases and you get the percentage of eggs in each.

Q. What is the total 182 down there where it says, "Total"? Isn't that the number of eggs you inspected?

A. Where is that? I don't see where you are pointing. No, that is 1 and 2 and 3 and 4.

Q. What is that "and"?

A. That is an and—that is my own handwriting. It is a script I have developed.

Q. Then that 3 "8" 4 really means 3 and 4, is that right? [468]

A. 1 and 2, and 3 and 4, yes.

Q. So that each of those percentages, then, is asceitained by the addition of the number of eggs involved, as shown in the column, starting from the top and going down and dividing by the number of cases, is that right? A. Yes.

Q. Now, would that be true under AA, A, B and C? A. Yes, by lots.

Q. By what? A. By lots.

Q. What do you mean by lots?

A. This delivery of 50 cases of eggs was divided into three respective lots.

Q. Yes.

A. By identification 1 and 2 cases graded were four cases, wooden cases—eggs in wooden cases—lot 3 and 4 is identified here as what you thought was 3 "8" 4—they were 37 cases in fiber, wire-strapped. There were nine cases identified by Lot No. 1 that were Pee-Wee eggs, small, undersized.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. You did not weigh those eggs, did you?

A. No, I did not.

Q. Now, then, when you say that there were nine cases of Pee-Wee eggs, that is your opinion and conclusion, isn't it? A. Yes.

Q. And it is based upon a visual inspection without weight, that is right, isn't it?

A. Yes.

Q. What is the weight of a medium egg under the regulations of the Army?

A. A medium egg?

Q. Yes. A. 20 ounces per dozen. [469]

Q. What is the weight per eggs?

A. Around an ounce and three-quarters.

Q. Is it an ounce and three-quarters, or is it about an ounce and three-quarters?

A. Well, it will vary. What egg are you talking about?

Mr. Faulkner: May I have the question read?

(The Reporter (reading):)

"Q. What is the weight of a medium egg under the regulations of the army?"

Mr. Faulkner: Q. Isn't that clear to you, Colonel? What is the weight of a Medium egg under the regulations?

A. The weight of an individual Medium egg?

Q. Yes, if you know.

A. You divide 12 into 20.

Q. Are you just making the mental calculation on the witness stand, or do you know as an expert what the weight——

(Testimony of Lt. Col. Pearl Hugh Hand.)

The Court: The testimony was it was 20 ounces to a dozen, and then you asked him what one of them would weigh, and he says divide 20 by 12.

Mr. Faulkner: I could have done that, your Honor.

The Witness: 12 into 20.

Mr. Faulkner: I have done it.

The Court. That is the record.

Mr. Faulkner: I want to know from the Colonel, who is here as a witness to facts and as an expert, if he could tell me as an expert what the weight of a Medium egg was per egg, and he says that the weight is "Divide 20 by 12." [470]

The Court: And he also said that they vary.

Mr. Faulkner: Q. Does the 12 vary, or the 20 vary, in that computation?

A. There is always 12, dozen. 12 eggs in each dozen.

Q. That won't vary, will it? A. No.

Q. And the regulations only vary from year to year, don't they?

A. I didn't understand the question.

Q. You say they vary. You have testified that the regulations provide that a Medium egg shall weight 20 ounces per dozen, and that there are 12 in a dozen. But you say something varies. Now, what varies?

A. Well, the weight of the eggs will vary within the 12 dozen.

Q. That may be true, but the standard does not vary, does it?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. No, 20 ounces per dozen.

Q. And that would mean 1¾ ounces to an egg. Now, how much did these eggs weigh

Mr. Hippeli: He didn't answer that.

Mr. Faulkner: Q. Is that correct, 1¾ ounces per egg?

A. One egg could weigh that, yes. One egg could weigh two ounces.

Q. If it had weighed 2 ounces what kind of an egg would it be?

A. It would be a large egg.

Q. If it weighed 1¾ ounces what kind of an egg would it be?

A. It could be a large egg in a dozen of large eggs. It could be a medium egg and still be called a large on a tolerance of [471] weight.

The Court: We will conclude for the day. The jurors may be excused. Return at ten o'clock tomorrow morning.

(An adjournment was taken until tomorrow, Wednesday, January 23, 1945, at 10:00 o'clock a.m.) [471-a]

Wednesday, January 23, 1945, 10:00 o'clock a.m.

The Clerk: The United States v. Nye & Nissen.

The Court: Call the roll.

(The clerk called the roll of the jurors, all jurors were present.)

LT. COL. PEARL HUGH HAND,

recalled:

Cross-Examination (resumed)

Mr. Faulkner: Q. Colonel, on the occasion that you were on the pier on the Henry White shipment —you were aboard the ship, were you not?

A. Aboard ship.

Q. At the time you made the inspection there you were——

Mr. Pratt: What ship are you referring to?

Mr. Faulkner: The Henry White. I think the date was—— Do you recall the date, Colonel?

A. No, I do not.

Q. Well, in the interest of time, the date was noted on this card here as May 3, 1944. That is the date you were there, is that correct?

A. Yes.

Q. Were Mr. Johnson and Mr. Magee with you on that occasion?

A. Mr. Magee was there.

Q. Were you joined by any other agent or inspectors? A. Not that I recollect.

Q. Now, the purpose of your presence there was to test a shipment of eggs that were already on that ship; am I correct? A. Yes. [472]

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. You had not seen them delivered; had you?

A. No.

Q. There were approximately 50 cases, is that correct; approximately 50 cases?

A. I wouldn't be able to verify that without looking at the grading sheet.

Q. It might be well if you just rest this on your lap and glance at it from time to time. There were approximately 50 cases, were there not, Colonel?

A. Yes.

Q. The purpose of your presence there, there is no question, was to determine as accurately as you could the quality of those eggs; is that correct?

A. Yes.

Q. Did you take a sample of any of the eggs? Did you retain a sample of any of the eggs?

A. You mean take it away from the ship?

Q. Yes. A. No.

Q. Did you break any of the eggs?

A. No.

Q. You know as an inspector that the way to determine quality of an egg is by actually breaking the egg or by inspecting it through a candle; isn't that correct? A. Yes.

Q. You chose the inspection by candling?

A. Yes.

Q. And, of necessity, that then became your opinion as to quality? A. Yes.

Q. You were making that inspection for a Department of Justice bureau, were you not? Were

(Testimony of Lt. Col. Pearl Hugh Hand.)

you not? I mean assuming the FBI is a part of the Department of Justice.

A. I was making it on orders from higher authority. [473]

Q. Yes, but you were making it for the Department of Justice, were you not?

A. That I did not know.

Q. At all events, you knew there was some litigation or some questions involved that called upon you to cooperate with certain agents of the FIB?

A. I was under War Department authority, orders.

Q. That was your authority to act, but you knew from your presence there with these agents what you were doing?

A. I was there to candle the eggs and determine the quality.

Q. You were there to determine the quality; you weren't there to candle the egs, were you?

A. That was the way I determined the quality, by candling them.

Q. That is the way you chose to determine the quality?

A. That is the only way I know. That is the way I have been trained to inspect eggs.

Q. That is a known method, isn't it, Colonel?

A. Yes.

Q. After you got all through candling the eggs and inspecting them and everything else that you wanted to do with those eggs, what did you do with them?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. They were placed, returned to the case and put back in the cooler, the refrigerator.

Q. Then where did the eggs go?

A. They went out to sea with the ship, if I remember correctly.

Q. You didn't see the eggs from then on. You didn't see the eggs from then on?

A. They were returned to the custody of the captain of the ship. [474]

Q. Do you know whether the captain of the ship was advised of your inspection?

A. That I don't know.

Q. Do you know whether the ship ever made a complaint of those eggs to Nye & Nissen?

A. The first mate looked at the small eggs and he said, "I thought it was funny, the eggs are really small."

Q. I did not ask you that. I said, did anyone make a complaint to Nye & Nissen?

A. The first mate——

Mr. Hippeli: May I ask the question be read?

The Court: Read the question.

(The record was read.)

Mr. Faulkner: Q. Do you know of your own knowledge?

A. The ship made the complaint to me, personally.

Q. You don't know whether they made a complaint to Nye & Nissen?

Mr. Hippeli: That was not the question.

Mr. Foulkner: Yes, it was.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Hippeli: Whether the ship ever made a complaint?

Mr. Faulkner: To Nye & Nissen.

The Witness: No.

Mr. Hippeli: Will you re-read the question?

(The record was read by the reporter.) [475]

The Court: Read the answer, Mr. Reporter.

(Answer read.)

Mr. Hippeli: May he complete that answer?

Mr. Faulkner: No, we object to his completing an answer that is not in response to the question.

The Court: Just a moment, Mr. Reporter. There may be some question about it.

Mr. Faulkner: Will you read the last question, please?

(Record re-read.)

The Court: Proceed. The question has been answered.

Mr. Hippeli: I do not think he has completed his answer to the first question.

The Court: The Court has ruled. Let us proceed.

Mr. Faulkner: Q. Colonel, you had no one to verify your opinion of the quality of those eggs, did you? A. No.

Q. Nor on any of the subsequent inspections that you made of eggs did you have anyone to verify your opinion as to the quality of the eggs?

A. Yes.

Q. On what occasions?

A. On numerous occasions.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. I mean you mentioned the Henry White, the Pillar, the Muir and the Coulter; now, on each occasion on your direct examination that you mentioned those four ships, did you have anyone down there qualified in the inspection field to verify your opinion as to quality?

A. Not on those particular boats, no. On the others. [476]

Q. So that on any of the occasions when you were inspecting eggs in conjunction with the FBI, in connection with an investigation of Nye & Nissen, you at no time had anyone there to verify your opinion as to quality, is that correct?

A. No.

Q. Colonel, on the occasion that you were inspecting eggs on the Henry White, those eggs, were they in the refrigerator box?

A. When I first saw them, yes.

Q. Is that a new or an old ship?

A. I don't remember whether it was new or old.

Q. Do you remember whether it was its maiden voyage?

A. I didn't understand the question.

Q. Do you remember whether it was its maiden voyage? A. No, I do not.

Q. Did you make any examination of the refrigeration on that ship on the occasion that you inspected the eggs? A. Yes.

Q. What was the extent of your examination?

Mr. Hippeli: I object to that as immaterial, your Honor.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Faulkner: The quality of eggs will deteriorate in 24 hours under improper refrigeration.

The Court: I will allow it. The objection may be overruled.

Mr. Faulkner: Q. What was the extent of your examination?

A. I examined the inferior of the box. It was sanitary. It apparently had new refrigerating equipment in it. The temperature was approximately 35. It was stocked for approximately 53 days voyage at sea. [477]

Q. 53?

A. Approximately, as near as I could ascertain.

Q. What was the temperature of this ice box, its Frigidaire plant? A. 35 degrees.

Q. Did you see that yourself? A. Yes.

Q. Somewhere in that freezing plant—or what is the correct name of it, Colonel?

A. It is a refrigerating unit or commonly called a cooler.

Q. In that refrigerating unit there were for a 53-day voyage more than 50 cases of eggs, weren't there?

A. I do not know how many cases they intended to take on the voyage.

Q. You do not know how many?

A. I do not know whether they were going to get eggs at other ports or not.

Q. Did you observe the contents of that box as to whether or not there were any other eggs except these that are purported to have come from Nye & Nissen?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. No, there were no nothers.

Q. You know that 50 cases of eggs would not be the quantity of eggs that a ship would carry for a 53-day voyage, don't you?

A. I do not know for sure about that. I am not an expert.

Q. What was stacked in this refrigeration plant? What did you see and observe?

A. Butter, eggs and cheese.

Q. Is that all?

A. As near as I can remember.

Q. Did you see any vegetables?

A. I don't remember.

Q. Did you see any meat?

A. I don't remember that.

Q. How large was the space that you observed of this refrigerating unit?

A. I do not recall. Standard size, I [478] would say.

Q. What would that size be?

A. I am not familiar with the dimensions of the box.

Q. You saw it? A. Yes.

Q. Can't you describe it in proportion to this room? Would it be as large as this room?

A. I would say it was approximately 12 by 30 by approximately a ceiling of 10 feet, 8 to 10 feet.

Q. Pipes running along the ceiling?

A. The usual refrigerating equipment. I did not pay particular attention to it.

Q. What is the usual refrigerating equipment?

(Testimony of Lt. Col. Pearl Hugh Hand.)

Are there pipes running along the ceiling in it?

A. I do not recall exactly just what type of refrigeration.

Q. Did you take the 50 cases of Nye & Nissen eggs, supposedly Nye & Nissen eggs, out of the refrigeration unit?

A. No. I went through them and took out representative samples.

Q. How were they stacked?

A. They were stacked one on the other, four high.

Q. Were they stacked similar to an egg plant, that is, in groups of four high with six——

A. Some of them three high, some of them individually on the floor.

Q. Did you go through all of them?

A. Yes, I counted them.

Q. You what?

A. I counted the cases and checked the labels.

Q. How many cases were there?

A. Fifty.

Q. That is by count? A. Yes.

Q. Now, then, you observed on some of those cases a Department [479] of Agriculture stamp, is that right? A. Yes.

Q. How many? A. Forty-one.

Q. What was the date?

A. The date of the stamp? I do not recall the date of the stamp.

Q. Was it a date, Colonel, within a month of the time that you were down there on the third day of May?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. I would say within 29 days of the time.

Q. What?

A. Within 29 days of the date.

Q. Within 29 days? A. Yes.

The Court: Within 29 days. That was your answer.

Mr. Faulkner: Q. Of the day that you were there? A. Yes.

Q. Now, you have testified in your examination, in the beginning, Colonel—you won't need that for time being, but I will—to your experience, your education and qualifications as an egg inspector. Will you tell the Court and the jury in your experience and from your knowledge and reading what the extent of deterioration will occur in eggs in a period of 29 days?

A. That is dependent on the quality of the eggs. If they are dirty eggs, like some of these were, that had been washed and sandblasted, and there has been a penetration of fecal matter and dirt through the pores of the shell, even though they are oil processed, if they stay over night in a temperature of 70 degrees, 24 hours, I would say they would deteriorate and turn black rot. It depends on the quality of the eggs and how they have been handled.

Q. In other words, how long a period will it take an egg that will pass a candler to turn to black rot under certain conditions? What is the shortest period of time?

A. If they are dirty and are washed and sandblasted eggs, they may go over night, 24 hours.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Is this not true, Colonel, that if the original egg rancher in accumulating his eggs observed a group of dirty eggs and put them in a bucket all together and then took a cloth and wiped those eggs; that when they were freshly wiped, candled and inspected within a day or two of that process they would pass any candler, wouldn't they?

A. No.

Q. In other words, do you feel that you are expert enough after your years in the army to take some eggs that I will bring in to you and tell which eggs have been washed by a rancher and which have not?

A. There is a penalty for that in the trade.

Q. I am not talking about penalties or what a rancher may have done improperly. From your skill, which you have indicated in the record, will you undertake to pass a test on determining whether an egg has or has not been washed by a rancher, by a candler? Yes or no?

Mr. Hippeli: I object to that. It is outside the scope of the direct examination.

Mr. Faulkner: It is a matter of his qualifications and skill.

The Court: I will allow it. The objection is overruled. [481]

A. No, I won't say that I can or anybody else.

Mr. Faulkner: Q. You know, as a matter of fact, do you not, Colonel, that if an egg—have you ever seen ranchers raise chicken eggs?

A. I have raised them since I was eight years old.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. The chances are you raised them properly, too; I mean with some degree of skill?

A. I assume so. They were pure bred.

Q. But you do know that certain types of ranchers will have eggs, put them in a bucket, and the minute the water is contaminated with the fecal matter of that chicken, and relating to that egg, even after he wipes the egg, for a short period of time they will have all the appearance of a normal egg, and then they will turn black rot like that, won't they?

A. No, that is not the general procedure of washing eggs, putting them in a bucket. That is a novice's way of washing eggs.

Q. What?

A. Dumping in bucket is not a proper procedure of washing eggs on a ranch.

Mr. Faulkner: Will you read that answer?

(Answer read.)

Mr. Faulkner: Q. You say that is not the proper procedure?

A. It is not the general accepted procedure, and anyone who has been ranching for some time will soon find that out.

Q. There is no question that it is done that way, is there, by someone?

A. Not long—maybe once or twice until they learn how to do it properly. [482]

Q. What is the proper procedure for washing an egg, Colonel?

A. I do not know that there is any.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Well, when you were ranching how did you wash them? A. I didn't wash them.

Q. You left them as is?

A. I gathered them as soon as they were laid. I didn't give them a chance to become dirty.

Q. From your knowledge of the egg business and your scope and field of your employment and from your own activity is there not a general and accepted way of washing an egg in a rancher's place?

A. Not as far as I know. It is still under experimentation.

Q. In other words, it is true, is not, Colonel, that if an egg has undergone treatment wherein it has been improperly washed or exposed to external deteriorating contacts, that an AA egg, and A egg, a B egg or a C egg will turn black rot within 24 hours? A. Not always.

Q. But sometimes? A. It could happen.

Q. But normally which quality of eggs is the most likely to turn into what you termed at one time a black rot? A. The AA.

Q. The A, the B or the C, the standard—which is the most likely to turn?

A. The lowest quality will turn the quicker of the three.

Q. Now, the lowest quality of egg for animal consumption, that is, for eating, is what?

A. Grade C or Trade.

Q. Grade what? A. C. [483]

Q. That is a Trade, equivalent to a Trade egg?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Yes.

Q. That is only fit for use by bakers?

A. It should be broken for cooks and bakers.

Q. Now, then, for the trade, for people who eat eggs, there is a grade which is the lowest grade which may be sold for the purpose of eating, isn't there? A. Standard or Grade B.

Q. Grade B or Standard? In other words, to get it clear, Colonel, Grades AA and Specials are synonymous? A. The top grade, yes.

Q. Grade A and Extras are synonymous?

A. Yes.

Q. Grade B and Standards; Grade C and Trades? A. Yes.

Q. Grade C or Trades are not sold for retail consumer consumption, are they?

A. There is a permitted tolerance in the Standard grade or Grade C.

Q. You know, do you not, that it is permissible to deliver at a ship under regulations in existence in 1944 any eggs that have been inspected within 21 days of the date of delivery? A. Yes.

Q. Now then, in the period of time from inspection in a plant, and inspection such as the one that you conducted on the third day of May, it would be obvious and was obvious to you, Colonel, that those eggs had been handled in some plant before they reached Nye & Nissen's plant in San Francisco, that they had been taken from the plant in San Francisco by truck to the waterfront, and that they remained on a pier for a period of time,

(Testimony of Lt. Col. Pearl Hugh Hand.)

with which you are not familiar, and that they were then [184] taken in a sling and put down into the hold of that ship. Those generally were things that you knew had happened to that 50 cases of eggs, isn't that correct?

A. I did not know all the pertinent steps in the delivery and packing of the eggs.

Q. You knew that they were in the hold of the ship?

A. I saw them in the refrigerating room, yes.

Q. You knew they were not grown there?

A. I knew they were placed there manually.

Q. And they were placed there by a sling; don't you know that?

A. No.

Q. You do not know how they got them in the hold?

A. No, I wasn't there.

Q. But you knew they had to be handled to get in there?

A. I presume they had to be placed there.

Q. And you knew somewhere along the line they would be placed upon a pier, is that right?

A. The ship was docked at a pier, yes.

Q. And that, some time in their life they would be riding in trucks or trailers?

A. I assume they were conveyed there. I do not know how they were taken down.

Q. Do the various types of handling that I have described improve the quality of the eggs or do they cause the eggs to deteriorate?

A. These particular eggs I would say on a short haul were not affected any by transportation. They

(Testimony of Lt. Col. Pearl Hugh Haid.)

were not broken. They had not had rough handling.

Q. How could you tell that?

A. They were not broken.

Q. You mean checks?

A. Leakers. When an egg is broken the inner shell membrane is penetrated and you have a leaker, yes. That is rough handling. If they break them in a sling, drop them in a hold, drop them in the refrigerating room, you will have broken eggs and it is very evident. Usually the lower or top filler is broken.

Q. What happens to the eggs when you jar the air cell?

A. In rough handling it may be bubbling or be free and move about the interior of the egg.

Q. That egg will not be a check and will not be a leaker, will it?

A. It will be a trade, Grade C.

Q. It will be a trade, Grade C? A. Yes.

Q. In other words, a AA egg that is rough handled and the air cell has broken automatically would go from a AA to a C, a trade egg, is that right?

A. It depends on the locality and the grade.

Q. Now, then, I would like to look at your sheet on the Henry White, and I will ask you whether or not you said you gave—how many cases did you grade? A. How many cases?

Q. Inspect and grade, yes? A. Five.

Q. Now, then, the first case, if you will look at

(Testimony of Lt. Col. Pearl Hugh Hand.)

your figures in your notes as to the first case of eggs, did that have a grade?

A. Did I grade the first case?

Q. No, not did you, but look at your notes as to the quality [486] as you indicated; has it got a grade?

A. I graded the individual eggs in the case, yes.

Q. What is the grade of the eggs itself?

A. It was not given a grade.

Q. You have data to give it a grade now, haven't you, right there on your lap?

A. That is not the way the eggs were graded.

Q. I say you have all the data on your lap right now to grade that first case of eggs, have you not?

A. Yes.

Q. What is the grade of the first eggs you inspected? A. I would grade U. S. Grade AA.

Q. Now, then, what is the grade of the second case that you inspected from the data that you took at that time and is now on that paper?

A. U. S. Grade AA. Pardon me. U. S. Grade A. U. S. Grade AA—pardon me, U. S. Grade A is the grade.

Mr. Faulkner: Q. I beg your pardon?

A. U. S. Grade A is the grade on the second case.

Q. That is the grade you would give to that?

A. Yes.

Q. The first was AA, the second was A?

A. They are both Grade A.

Q. Yes. Will you look at the——

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. The grade is right there.

Mr. Pratt: It is confusing.

Mr. Faulkner: I don't think it is confusing.

The Court: Just a moment.

Mr. Faulkner: To clear it up, you mentioned AA but you meant A on the first one.

A. That is correct.

Q. Then we are down to the third case.

A. I might say in referring to the first two cases there are four cases given Grade A—it appears on the report.

Q. I can't see those here, Colonel.

A. Four good cases of eggs there, I gave them a fair grade. It was written in there.

Q. You only tested five, four of them you graded A?

A. I picked two of the wooden cases.

Q. I asked you how many you graded. You said five.

A. Yes, but I graded them as three different lots of eggs.

Q. You graded four of the five as Grade A?

A. No, two of them. [488]

Q. You say four cases grade A in your own handwriting:

A. I graded two of them and assumed the other two were Grade A, since the two wooden cases were grade A.

Q. Do you mean there were four wooden boxes?

A. Yes.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. You graded two of them and found they were Grade A?

A. I assumed the other two would be the same, since they were practically identical.

Q. So of the eggs you graded, it appears that two-fifths of them grade Grade A?

A. Four cases.

Q. You only had five cases, didn't you?

A. Yes.

Q. You graded two of them?

A. On the basis of 50 cases, yes.

Q. In other words, regardless of the basis you were candling and grading five cases of eggs out of 50? A. Yes.

Q. Two-fifths of those cases grade A, isn't that right? A. No; four cases out of 50.

Q. I beg your pardon. Two out of those five cases that you graded graded Grade A, didn't they? "Yes" or "No".

A. Four cases graded Grade A.

Q. You didn't grade four wooden cases of eggs?

A. Two.

Q. You graded two? A. Yes.

Q. You graded three that were not wooden cases? A. Yes.

Q. Of the five cases you graded, two of those cases graded Grade A Medium eggs? A. Yes.

Q. Are the two cases that you graded that were not wooden cases, are they No. 1 and 2 on your paper? A. 3 and 4 were [489] fiber.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Which would be the figures that relate to the cases that you didn't grade A?

A. 37 cases were wire-strapped in fiber.

Q. Where are they on your paper?

A. Right here.

Q. What is that? A. 3 and 4.

Q. 3 and 4? A. Yes.

Q. How about 5?

A. This is 5. This is one lot in itself taken as No. 5.

Q. The third case that you graded, what was the grade? A. It was given no grade.

Q. Why did you not give that a grade—withdraw that. How many AA eggs were in the third lot? A. In the third case?

Q. The third case. A. There were none.

Q. How many A's?

A. There were fourteen.

Q. How many B's? A. 53.

Q. How many C's? A. 26.

Q. Up to that point of time there are enough A's, B's and C's to give that case of eggs a grade of some kind, are there not?

A. No, because there was too much loss.

Q. We haven't come to the loss yet.

A. You are asking about a grade.

Q. I say, up to that point of time when you have 14 A's, 53 B's, 26 C's, there are enough A's, B's and C's there, eliminating any question of leakers or losses, to give the eggs a grade?

A. Eggs are not graded on that basis. [490]

(Testimony of Lt.-Col. Pearl Hugh Hand.)

Q. I did not ask you that. There are enough eggs in those three categories, if you eliminate the dirties and the checks and the leakers and the losses to give them a grade up to that point?

Mr. Pratt: I object to that. The witness already said they don't grade eggs that way.

The Court: Read the question.

(Question read.)

The Court: Do you understand that question?

The Witness: Yes.

The Court: Can you answer?

The Witness: No.

The Court: Why?

A. Because there was not 100 eggs.

Mr. Faulkner: All right.

Q. How many eggs does that account for? That accounts for 93. Suppose there are a hundred eggs and we don't know what the other 7 are; you have 93 eggs that are A's, B's and C's. Does that qualify those eggs for a grade?

Mr. Pratt: I object to the question as a hypothesis that could not be assumed.

Mr. Faulkner: Your Honor, the regulations are so clear. If the Government will get out the correct regulations and bring them in here we will get further.

The Court: I will sustain the objection.

Mr. Faulkner: Q. Why did you give that case of eggs no [491] grade, Colonel?

A. There were four rotten eggs in it.

Q. That was the only reason? You don't know

(Testimony of Lt.-Col. Pearl Hugh Hand.)

whether those eggs were in that condition when they were originally inspected three weeks before by the Department of Agriculture, do you?

Mr. Hippeli: I object to that as assuming something not in evidence, when they were inspected by the Department of Agriculture.

Mr. Faulkner: He testified 41 of these cases bore the Department of Agriculture stamp within 29 days——

Mr. Hippeli: He said he didn't know the date.

The Court: Read the question.

(Record read.)

The Court: Sustained.

Mr. Faulkner: Q. You don't know what the condition of the eggs was three weeks before, at the time you inspected them, do you?

A. From all indications they were all storage eggs, yes. They had been in storage for some time.

Q. Do you know their condition?

A. They had what we call around the air cell a horse collar, a dark ring caused by the separation of the air cell, the inner shell membrane forming it separating from the shell. That is indicated by storage. It only occurs in old storage eggs.

Q. Is that your answer?

A. That would be my assumption.

Q. Assuming they were storage eggs which you were pleased to [492] call them, what were their condition three weeks before, do you know that?

A. Since they were oil-processed, I would as-

(Testimony of Lt. Col. Pearl Hugh Hand.)

same under storage conditions they were about the same as they were when they were stored.

Q. Colonel, only the best eggs are put in storage by any plant? A. No.

Q. Is it worth while for any egg packer to pay the storage on poor quality eggs?

Mr. Hippeli: I object to that as immaterial, your Honor.

Mr. Faulkner: If you know.

The Court: If he knows he may answer.

A. It is done on occasion, yes. Not a general practice of the trade, but part of the trade does it, yes.

Mr. Faulkner: Q. The general practice in the trade is that the eggs that go in storage are the best quality eggs? A. Yes.

Q. They go in storage in what month of the year, what period of time do eggs go into storage, Colonel? A. In the flush season.

Q. When is that?

A. It varies in different states.

Q. Well, in the State of California.

A. I would say March, April, May and June.

Q. The flush season. When are they usually withdrawn from storage?

A. That depends on the contractor that has them stored. [493]

Q. Usually withdrawn in the slack season, aren't they, when eggs are not plentiful? Isn't that right?

Mr. Pratt: I object to this line of questioning. It seems to me it is immaterial and irrelevant.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Faulkner: I submit the objection.

Mr. Pratt: It is getting far afield.

The Court: I will allow the widest latitude, but you must keep in mind that we are going afield in some respects.

Mr. Faulkner: I don't believe so, your Honor. I can state the purpose——

The Court: He may answer.

The Witness: What was the question?

The Court: Read the question.

(Question read by the reporter.)

The Witness: A. You mean storage eggs?

Mr. Faulkner: Q. Yes. A. Yes.

Q. The time that they delivered the eggs down at the Henry White was in the period of time in California when eggs were in the flush season and in the plentiful season; isn't that right?

A. Yes.

Q. The fourth case of eggs—the case of eggs in—the third case which you said had four under the heading "Loss", what was the nature of the loss, what was wrong with the eggs?

A. They were rotten.

Q. Then you have U. S. Checks. How many Checks were there? [494]

A. Speaking of which case?

Q. The third. A. There were three.

Q. On your fourth case of eggs how many?

A. Six——

Q. How many A's were there, or AA's?

A. The fourth case, there were 16 A's.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. How many B's? A. 39.

Q. How many C's? A. 18.

Q. Did you give that case a grade?

A. No.

Q. Why?

A. Because it was graded with the other case, the third case.

Q. Can you give that case a grade as you read the data that you assembled on that date?

A. It was given a grade in conjunction with the third case. They were candled as a lot.

Q. I asked you if taking the information you assembled for the fourth case of eggs indicated in your report what grade you would give that case of eggs.

A. It was graded with the third case, it was given——

Q. I asked you—well, I will restate it. Will you please look at the data you have assembled there for the fourth case of eggs and tell me what grade you would give the fourth case of eggs from the information that you say you put on your paper on May 3, 1944? A. Grade B.

Q. Grade B. The fifth case of eggs, how many AA's? A. There were none.

Q. How many A's? A. 8. [495]

Q. How many B's? A. 40.

Q. How many C's? A. 33.

Q. Some of these eggs had small meat spots or small blood clots, is that right? A. Yes.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Does that disqualify an egg from being given a grade?

A. No, it is under the tolerance.

Q. What?

A. It is in the tolerance for eggs.

Q. You have a column, "U. S. Light Dirties." What about eggs that are Light Dirties, that doesn't disqualify them from being graded as high as AA, does it?

A. You mean the whole case of Light Dirties?

Q. No. I mean if some are Light Dirties.

A. There is a tolerance there for Light Dirties.

Q. Is there a tolerance for U. S. Dirties?

A. In certain grades, yes.

Q. U. S. Checks? A. Yes.

Q. U. S. Leakers? A. No.

The Court: We will now take a recess.

(Recess.) [496]

Q. I think I was asking you, Colonel, if on the fifth case of eggs—why did you reject those or give that no grade?

A. There were 10 Rots, and it was a case of Pee-Wees, or small eggs.

Q. The last case was a case of Pee-Wees?

A. Yes.

Q. What is a Pee-Wee egg?

A. It is a pullet egg.

Q. What is a Medium egg?

A. It is about the third egg that a young pullet will lay, starting to lay.

Q. What is the definition of a Pee-Wee egg

(Testimony of Lt. Col. Pearl Hugh Hand.)

under the regulations of the Department of Agriculture?

A. They are not graded by the Department of Agriculture.

Q. Is that the definition?

A. The trade defines them as undergrades, undersize Pee-Wees, pullet eggs.

Q. Under the Department of Agriculture and under the Army regulations will you describe the various types of eggs according to size, starting with the largest? What are they?

A. U. S. Grade AA or Special——

Q. As to size. That is quality.

A. As to size?

Q. Yes.

A. Large eggs weigh 24 ounces per dozen.

Q. What is the next? A. Medium.

Q. What? A. Medium.

Q. How much do they weigh?

A. 21 ounces per dozen.

Q. 21? A. Yes.

Q. How long has it been 21, Colonel?

A. 22, I should say.

Q. What?

A. 22 ounces per dozen, a minimum of 21 [497]

Q. What?

A. The large is 24, the Medium are 22 per dozen. The minimum weighs 21 in any dozen.

Q. We now have Large and Medium, is that right? A. Yes.

Q. What is the next size? A. Small.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. How much do they weigh?

A. A minimum of 18.

Q. The minimum is 18. Now, when you were determining the size of eggs, were those the figures that you had in mind of what you determined a large egg, a small egg, and a medium egg?

A. Yes, I had an egg scale.

Q. I mean apart from the egg scale—that is something you weigh with, isn't it?

A. Yes, by weight.

Q. But your determination of whether an egg is large, medium or small is an accurate knowledge of the regulations defining them, isn't it?

A. Yes.

Q. As I understand, your testimony is that a medium egg is 22 ounces, a small egg is 18 ounces, a large egg is 24 ounces?

Mr. Pratt: I object. That was not the answer. He said a small egg was a minimum of 18 ounces.

Mr. Faulkner: I beg your pardon. A small egg was 18 ounces.

Q. Is that right? A. 16 to 19.

Q. What?

A. Some graders grade them 16 to 19.

Q. A moment ago you said a small grade egg had a minimum of 18 ounces, didn't you? Didn't you say that? A. Read the question. [498]

Q. Whis is it? A. A minimum of 18, yes.

Q. Pardon me? A. Yes.

Q. What is the answer? A. Yes.

Q. Let us start over and get this record right.

(Testimony of Lt. Col. Pearl Hugh Hand.)

What is the weight of a dozen eggs, what is the minimum weight required of a dozen eggs to make it a large egg? A. 24 ounces.

Q. What is the minimum weight required to make a medium egg? A. 22.

Q. And what is the minimum weight required to make a small egg? A. 20.

Q. Pardon me? A. 20.

Q. Now, it was those weights you had in mind when you gave your testimony here in which you classified certain eggs as Pee-Wees and Smalls and Mediums and so on, wasn't it? A. Yes.

Q. Now, then, you have classified the weight for a large egg, a medium egg, and a small egg. What is the weight of a Pee-Wee egg?

A. It is under the weight for a small egg, under 15 ounces per dozen.

Q. That would be a Pee-Wee?

A. An undergrade, under size, pullet egg.

Q. You have testified that you observed certain cases that had the label of Nye & Nissen and on that particular label you saw a letter "P,"—I think that it was this very Exhibit No. 67.

A. Yes. My signature is on that.

Q. And you say the letter "P" stood for something, is that [499] right.

A. In the cases they were Pee-Wee eggs.

Q. You stated that the letter "P" on that case stood for something, didn't you?

A. I assume so, yes.

Q. Do you know what the letter "P" stands for?

(Testimony of Lt. Col. Pearl Hoyt Hand.)

A. Apparently in this case it was Pee-Wee. There were Pee-Wees in the case.

Q. We will come to what was in the case later. What does the letter "P" stand for on a Nye & Nissen case? You have seen thousands of them, haven't you? You have seen the letter "P" literally thousands of times on a Nye & Nissen case. Tell me what it stand for.

A. I haven't seen it thousands of times.

Q. You have seen Nye & Nissen cases thousands of times, have you not? A. Yes.

Q. And you have never seen the letter "P" until you got on the waterfront? A. No.

Q. You never have. All right. Is it your opinion from your knowledge as an expert and from your experience in the Army that the letter "P" stood for Pee-Wees? A. In this case, yes.

Q. In that Henry White shipment we have been referring to—I want to clear this up in fairness to you, Colonel—it has been referred to on numerous occasions in the questions I have asked you as the first occasion that you went down and made an examination of eggs in conjunction with the Department of Justice agents; that is right, isn't it?

A. No.

Q. I mean you have so referred to it, haven't you, with respect [500] to the Henry White?

A. It is the first one on direct testimony that I testified to, yes.

Q. I mean we had referred to it. I wanted to clear that up. And you said, whether you meant

(Testimony of Lt. Col. Pearl Hugh Hand.)

to or not, it was the first occasion that you went down to inspect eggs with the Department of Justice agent? A. It was one occasion.

Q. Well, it was the last, wasn't it?

A. I don't remember.

Q. What is your best recollection?

A. I wouldn't say so, no.

Q. You have no recollection of whether it was the first or last, is that it? A. No.

Q. Do you recall when you stopped inspecting eggs with the Department of Justice in connection with Nye & Nissen?

Mr. Pratt: I object to that. He has said that he was not inspecting them for the Department of Justice, but was inspecting them on the order of his superior in the Army.

Mr. Faulkner: I said "in conjunction with," your Honor. I think it was a fair question the way it was propounded.

The Court: Read the question.

(Question read.)

A. The 23rd of June, 1944.

Mr. Faulkner: Q. The 23rd of June?

A. Yes.

Q. Where was that? Where was that? Where was that inspection?

A. The inspection was not made that date. That is when I left San Francisco.

Q. When was the last time you inspected in conjunction with [501] the Department of Justice agents? A. I do not recall.

(Testimony of Lt. Col. Pearl Hugh Hand.)

Q. Was it in the month of May?

A. I do not recall.

Q. Was it in the month of June?

A. I do not remember.

Q. Was it one of the ships that you have referred to here, the Pillar, the Coulter, the Muir, or the Henry White? A. No.

Q. Do you remember the name of the ship?

A. No, I do not. There were so many of them, I can't keep track of them.

Q. Did you preserve records of other inspections made at or about this time in connection with shipments of eggs from Nye & Nissen, other than those that were produced here in court?

A. I don't understand the question.

The Court: Read it, Mr. Reporter.

(Question read.)

The Witness: Shipments to where?

Mr. Faulkner: Q. To any ship or to any consignee, while you were inspecting in conjunction with the Department of Justice.

A. In conjunction with another inspector, yes.

Q. Do you remember the names of the ships that you went to? A. No.

Q. You do not remember the names?

A. No.

Q. Have you got the records? A. No.

Q. What did you do with them?

A. They are in the possession of the other inspector. [502]

Q. Of whom?

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. Of another inspector, a War Department inspector.

Q. Who was that? A. Captain Evans.

Q. Now, you were present with him on other inspections, is that right? A. Yes.

Q. Between sometime in April and the 23rd of June?

A. Yes, I presume that is the date.

Q. Now, in the Henry White shipment you say there were some Pee-Wee eggs? A. Yes.

Q. What was the weight of those eggs?

A. My scale would not weigh them. I assume they would not weigh up to small grade. They were under fourteen ounces.

Q. What was your scale set to weigh eggs?

A. It was adjustable.

Q. Well, to what extent was it adjustable?

A. It could be adjusted to weigh 1.66 on mediums or 1.83 ounces per dozen on large.

Q. So that your scale that you were using was there to weigh mediums and to weigh large, is that right?

A. It was adjusted to weight small eggs also.

Q. How low could you adjust the scale?

A. It could be adjusted to a small egg within a tolerance. If an egg would not tip the scale when it is set a Small Weight, then it is adjusted to size.

Q. What would you adjust that to to determine whether it was [513] a small

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. It would be adjusted on a small weight basis.

Q. What is that basis?

A. A minimum of 18 ounces per dozen.

Q. Is that the way you adjusted it on the day that you weighed eggs on the Henry White?

A. I adjusted it so that it would weigh as small an egg as possible.

Q. What weight did you put on your scale when you weighed these Pee-Wee eggs on the Henry White? Was it the factor 18? Was that the basis of it? Was it the factor 22 or 24?

A. It was set down to 16 ounces.

Q. Is that what you put? 16 ounces? Is that the way you regulate the scale?

A. Between 15 and 16.

Q. Now, you remember that distinctly?

A. Yes.

Q. And you have got that type of scale that you can regulate between 15 and 16, is that right?

A. At that time, yes.

Q. Would you give me the name of that type of scale? A. I do not remember the name.

Q. Do you know of any egg scale that will register between 15 and 16 ounces?

A. If properly regulated, yes, by weights.

Q. Will you give me the name of any scale that you have ever seen which when properly regulated will weigh weights between 15 and 16 ounces?

A. I will get one.

Q. Give me the name, please.

(Testimony of Lt. Col. Pearl Hugh Hand.)

A. I will have to look it up.

Q. So that on the occasion that you were weighing eggs on the Henry White you had fixed your scale to weight between 15 [504] and 16 ounces; is that your memory and recollection? A. Yes.

Q. Will you describe the appearance of that scale that you used on the Henry White? If you would draw it on the blackboard it would be better.

A. I don't believe I can. It has been two years.

Q. It is what?

A. It has been approximately two years since I used it.

Q. All egg scales look alike, don't they, Colonel?

A. No.

Q. How many different types of egg scales have you used in your time within the last year or two?

A. Three or four.

Q. They all look practically the same, don't they, Colonel? A. No, they do not.

Q. Tell me the difference.

Mr. Pratt: If the Court please, this is getting away off the track, it seems to me.

Mr. Faulkner: No, we are right on the track now, Mr. Pratt, on the weight of these eggs. We are right on it.

Mr. Pratt: I object to it.

Mr. Faulkner: That is not a legal objection, your Honor.

The Court: Read the question.

(Question read.)

(Testimony of Lt. Col. Pearl Hugh Hand.)

Mr. Faulkner: I will withdraw any pending question.

Q. Do the United States Army regulations provide for the weighing of eggs by a standard United States Army scale? [505]

A. No, they do not specify a particular scale.

Q. Does the United States Veterinary Corps of the Ninth Area, the Ninth Corps Area, of which you have been a member for the period of time indicated in your direct examination, have a standard scale for weighing eggs? A. No.

Q. Did you have, in the particular work you did, a standard scale for weighing eggs?

A. I had a scale, yes.

Q. Is that the scale that you used for the Henry White? A. Yes.

Q. Where is that scale?

A. I don't know. I presume it is at the Presidio of San Francisco.

Q. Now, the scale that you have, will you describe that scale, the one that you have just mentioned?

Mr. Hippeli: I object to that as immaterial, your Honor. We are concerned with the scale he used. He said he did not remember the scale he used.

The Witness: I do not remember the particular mechanics of the scale, that is, how it is built, and all that. It has been so long.

Q. Could you draw it on the blackboard?

A. No.